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EXAMINER	
ZECHER, MICHAEL R	
ART UNIT	**PAPER NUMBER**
3609	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/044,519	GRIFFIN, KENNETH C.
	Examiner	Art Unit
	Michael R. Zecher	3609

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 1/11/2002.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-14 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-14 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 9/20/02
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The following is a non-final, first office action on the merits. Claims 1-14 are pending.

Claim Objections

2. Claim 1 is objected to because of the following informalities: (PFs) performance fees should be spelled out the first time it is used in a claim. Abbreviation is acceptable after "performance fees" have been expressly recited within a claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipate by Levy et al. (September 1993).

As per claim 1, Levy et al. teaches a computer-implemented method of accounting for investment fund (See Exhibit 1 and pg. 86, column 3 which depict and discuss accounting for a hedge fund using a computer program), said investment fund comprising a plurality of shares having a uniform asset value (See Exhibit 1 which depicts capital contributions from various investors where the uniform value of each share is $10,000), said investment fund further comprising a plurality of investors (See Exhibit 1 which depicts capital contributions form various investors), wherein each

investor of said plurality of investors owns a number of shares (See Exhibit 1 which depicts the percentage of the total fund owned by each investor based on their capital contribution), said method comprising the steps of:

tracking the uniform asset value per share (See Exhibit 1 which depicts the adjusted capital balances as of July 1st and December 31st and the net income from January 1st-July 1st and July 1st-December 31st); and

calculating fees such as [performance fees] owed by or credits owed to each investor, if any, among said plurality of investors (See Exhibits 1 & 2 which depicts each limited partner's net capital appreciation and 20% of the realized gain reallocated to the general partner).

As per claim 2, Levy et al. teaches wherein said uniform asset value per share does not reflect said fees or said credits, if any (See Exhibit 2 which depicts the unrealized gain before the manager's 20% fee is applied).

As per claim 3, Levy et al. teaches wherein said uniform asset value per share is reported to a stock exchange or other third-party data gatherer (See pgs. 32, 35, and 86 which discuss how hedge funds must comply with appropriate SEC requirements for private placement and, furthermore, how the GAAP requires the reporting of financial statements, specifically the unrealized gains/losses as a component of net income).

As per claim 4, Levy et al. teaches adjusting the number of shares owned by each investor of said plurality of investors upon the occurrence of a realization event to reflect the payment of fees or receipt of credit, if any (See Exhibit 2 which depicts the

adjusted monetary value of shares owned by each investor after the relevant interim dates to reflect the payment of fees to the fund manager).

As per claim 5, Levy et al. teaches wherein the obligation or entitlement of said investors to pay fees or receive such credits is a separate contractual obligation (See pg. 32 and 33 which discuss compensation arrangements where the management fee is calculated and paid monthly or quarterly, depending on the provisions of a limited partnership agreement prepared by securities attorneys).

As per claim 6, Levy et al. teaches a method of accounting in an investment fund, said investment fund comprising of a plurality of total shares outstanding having a total value (See Exhibit 1 which depicts a percentage and value of total shares outstanding), said investment fund further comprising a plurality of investors (See Exhibit 1 which depicts capital contributions form various investors), wherein each investor of said plurality of investors owns a fraction of the plurality of the total shares outstanding (See Exhibit 1 which depicts the percentage total of shares owned by investors A, B, C, and D), and wherein said fractions each have a value (See Exhibit 1 which depicts the corresponding value of each percentage of shares owned by investors throughout a fiscal year), and wherein said total shares outstanding have a uniform asset value per share (See Exhibit 1 which depicts capital contributions from various investors where the uniform value of each share is $10,000), said method comprising the steps of:

monitoring the investments in said investment fun (See Exhibit 1 which depicts the monitoring of each investors contribution on July 1st and December 31st by

indicating the adjusted capital balances and respective percentages of each investment);

tracking the total shares outstanding in said investment fund (See Exhibit 1 which depicts the adjusted capital balances as of July 1^{st} and December 31^{st} and the net income from January 1^{st}-July 1^{st} and July 1^{st}-December 31^{st});

calculating the uniform asset value per share in each investment fund (See Exhibit 1 which depicts the requisite capital contribution of the general partner as $10,000, or 1% of the total, in order to satisfy income tax requirements);

tracking the fraction of the plurality of total shares outstanding held by each of said investors in said investment fund (See Exhibit 1 which depicts the percentage of the total shares held by each investor at the beginning, middle, and end of a fiscal year);

calculating the value of each fraction of the plurality of total shares outstanding held by each of said investors in said investment fund (See Exhibit 1 which depicts the initial capital contribution and the adjusted capital balances at the beginning, middle, and end of a fiscal year);

calculating the fees owed by or credits owed to each investor in said investment fund (See Exhibits 1 & 2 which depicts each limited partner's net capital appreciation and 20% of the realized gain reallocated to the general partner);

calculating the net asset value of each of said shares owned by each of said investors in said investment fund (See Exhibit 1 which depicts the net incomes correlated with the capital contribution of each investor from January 1-June 30 and July 1-December 31, respectively).

As per claim 7, Levy et al. teaches wherein prior to a realization event (See Exhibits 1 which depicts adjusted capital balances in relation to the beginning, middle, and end of a fiscal year), said investors have a first number of shares (See Exhibit 1 which depicts the capital contribution of each investor as of January 1 and the respective percentage total each investor holds in the fund), and wherein subsequent to said realization event, said investors hold a second number of shares (See Exhibit 1 which depicts the adjusted capital balance and respective percentage total each investor retains in the fund following the capital contribution of D), wherein said second number of shares can be different from said first number of shares by a number of shares cancelled for fees or added for credits (See Exhibit 1 and pg. 86, column 1, second full paragraph, which depicts and discusses the reallocation of fees to the General Partner, the subsequent adjusted capital balance and percentage of shares, and how a determination of net income or loss must be made for every period where the sharing ratios change), said method further comprising the steps of:

calculating the second number of shares to be issued to each investor upon occurrence of the realization event (See Exhibit 1 which depicts the adjusted capital balance and respective percentage total each investor retains in the fund following the capital contribution of D);

calculating the number of shares cancelled or added, if any (See Exhibit 1 and pg. 86, column 1, second full paragraph which depict and discuss adjusted capital balances and subsequent percentage of shares after July 1st and December 31st,

respectively, and how a determination of net income or loss must be made for every period where the sharing ratios change);

reissuing the second number of shares to each of said investors (See Exhibit 1 which depicts percentage of shares following the capital contribution by D and the reallocation to general partner); and

delivering the cancelled shares or the proceeds thereof against fees, if any (See Exhibit 1 and pg. 86, column 1, second full paragraph, which depict and discuss reallocation to the general partner determined by taking 20% of the net appreciation from each limited partner's capital account, and how a determination of net income or loss must be made for every period where the sharing ratios change).

As per claim 8, Levy et al. teaches a method of accounting for an investment fund (See Exhibit 1 and pg. 86, column 3 which depict and discuss accounting for a hedge fund), said investment fund having a plurality of shares and a plurality of categories of shares (See Exhibit 1 which depicts a hedge fund invested in a particular category with numerous shares; only one category is depicted, but the definition of a hedge fund provides that they are limited only by the terms of their governing contracts and can follow more complex investment strategies), said investment fund further comprising a plurality of investors (See Exhibit 1 which depicts capital contributions form various investor), each investor among said plurality of investors having shares in at least one category of said plurality of categories of shares (See Exhibit 1 which depicts the percentage of the total fund owned by each investor based on their capital contribution), said method comprising the steps of:

tracking the shares held by each of said investors (See Exhibit 1 which depicts the percentage of the total shares held by each investor at the beginning, middle, and end of a fiscal year);

tracking the categories of shares held by each of said investor (See Exhibit 1 which depicts the percentage of the total shares held by each investor in a particular category at the beginning, middle, and end of a fiscal year; see definition of a hedge fund);

redistributing shares among the categories held by each of said investors upon occurrence of a realization event (See Exhibit 1 which depicts percentage of shares following the capital contribution by D and the reallocation to general partner); and

canceling shares to account for accruals or adding shares to account for credits, if any, upon occurrence of a realization event (See Exhibit 1 and pg. 86, column 1, second full paragraph which depict and discuss adjusted capital balances and subsequent percentage of shares after July 1st and December 31st, respectively, reallocation to the general partner determined by taking 20% of the net appreciation from each limited partner's capital account, and how a determination of net income or loss must be made for every period where the sharing ratios change).

As per claim 9, Levy et al. teaches the step of notifying each of said investors as to the number of shares distributed to each category held by said investor after occurrence of said realization event (See Exhibit 1, pg. 86 column 1, second full paragraph, and pg. 86, column 3, second full paragraph which depicts and discusses adjusting capital balances and subsequent percentage of shares after July 1st and

December 31st, respectively, how a determination of net income/loss must be made and an allocation performed for every period where the sharing ratios change, and how investors must be apprised of their preliminary share of results so they can comply with tax rules in preparing their income tax projections).

As per claim 10, Levy et al. teaches an apparatus for use in regulating an investment fund having investors (See Exhibit 1 & 2 and pg. 86, column 3, which depict and discuss tables illustrating accounting of an investment fund and how the preferred practice of allocating realized gains/losses for an investor requires a computer), said investors each having an investment in said investment fund (See Exhibit 1 which depicts capital contributions form various investors), said apparatus comprising:

a memory storage device capable of storing information relating to the investment funds as a whole, and said memory storage device further capable of storing information relating to the investments of each of said investors in said investment fund (See pg. 86, column 3, which discusses how the preferred practice of allocating realized gains/losses for an investor within an investment fund requires a computer; it is inherent that a computer would have a memory storage device because all computers have memory storage devices); and

a processor, capable of receiving general market inputs and input from said memory storage device (See pg. 86, column 3, which discusses how the preferred practice of allocating realized gains/losses for an investor within an investment fund requires a computer; it is inherent that a computer would have a processor device because all computers have processors; furthermore, it is inherent that a computer can

receive input from a memory storage device or other source because all computers have memory storage devices that operate in conjunction with the computer processor and most computers are connected to the internet, thus allowing information, such as general market figures, to be imported to the processor), wherein said processor is further capable of determining a uniform share value which does not reflect fees or credits, if any (See Exhibit 1 which illustrates a table containing capital contributions from various investors where the uniform value of each share is $10,000), wherein say processor is further capable of individually tracking the fees owed by each of said investors (See Exhibits 1 & 2 which illustrates a table containing a 1% management fee and 20% of the realized gain reallocated to the general partner), and wherein said processor is capable of determining a net asset value for each of said investors (See Exhibits 1 & 2 which illustrates a table containing each limited partner's net capital appreciation).

As per claim 11, Levy et al. teaches wherein said processor is further capable of reallocating fewer or more shares to each of said investors upon the occurrence of a realization event, if said investor owes fees or receives credits (See Exhibits 1 & 2 which illustrates a table containing a 1% management fee, 20% of the realized gain reallocated to the general partner, the adjusted capital balance following the reallocation, and the percentage total of shares retained by each investor).

As per claim 12, Levy et al. teaches wherein said processor is further capable of canceling or issuing a number of shares sufficient for the payment of fees owed by or credits owed to any investor among said investors which owes fees or is owed credits

(See Exhibits 1 & 2 and pg. 86, column 1, second full paragraph, which illustrates a table containing a 1% management fee, 20% of the realized gain reallocated to the general partner, the adjusted capital balance following the reallocation, and the percentage total of shares retained by each investor, and discuss how a determination of net income or loss must be made for every period where the sharing ratios change).

As per claim 13, Levy et al. teaches wherein said memory storage device is further capable of storing information relating to different categories of shares, and wherein said processor if further capable of distributing shares remaining after said realization event into said different categories according to a predetermined method (See Exhibit 1 which illustrates a table of a hedge fund invested in a particular category with numerous shares [see preceding definition of hedge fund] that includes the percentage of shares following the capital contribution by D, the 20% reallocation to general partner, an adjusted capital balance as of December 31st, and the percentage of total shares retained by each investor following the reallocation).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levy et al. (September 1993) in view of Gastineau et al. (U.S. 7,099,838).

Levy et al. teaches a method implemented in a computer system for management of an investment fund (See Exhibit 1 and pg. 86, column 3 which depict and discuss accounting for a hedge fund using a computer program) to maintain a uniform share price for all investors in the investment fund (See Exhibit 1 which depicts capital contributions from various investors where the uniform value of each share is $10,000) and for paying a PF to a fund manager based on the investor gains in the investment fund (See Exhibits 1 & 2 which depicts each limited partner's net capital appreciation and 20% of the realized gain reallocated to the general partner), comprising the steps of:

Determining on a repeating basis the value of shares in said fund (See Exhibit 1 which depicts the monitoring of each investors contribution on July 1st and December 31st by indicating the adjusted capital balances and respective percentages of each investment), wherein said share value is uniform among all shares and is dependent upon investments made by said fund (See Exhibit 1, pg. 32, columns 2 & 3, and the definition of a hedge fund which depicts and discuss capital contributions from various investors where the uniform value of each share is $10,000, the freedom the fund manager possesses over trading strategies, and see the preceding definition of a hedge fund), wherein said share value does not reflect and fees or credits incidental to the management of the fund (See Exhibit 1 which depicts adjusted capital balance and subsequent percentage of shares after July 1st), and

Upon occurrence of a realization event for the fund (See Exhibit 2 which depicts the adjusted monetary value of shares owned by each investor after the relevant interim dates, specifically after the capital contribution of D on July 1st), performing the steps of:

(a) determining those of said investors in said fund which have incurred gains in value for their investments during a period of time (See Exhibit 1 which depicts the adjusted capital balance as of July 1st),

(b) determining the amount of the gain for each said investor which has recognized a gain (See Exhibit 1 which depicts the net income from January 1st-July 1st and July 1st –December 31st),

(c) determining a PF owed to said fund manager for each said investor which recognized a gain on such investor's shares base on the amount of said gain (See Exhibits 1 & 2 which depicts each limited partner's net capital appreciation and 20% of the realized gain reallocated to the general partner),

(d) reducing the number of shares held by each said investor which recognized a gain by a selected amount wherein the value of the reduced number of shares is equal to the PF owed by the investor to said fund manager (See Exhibit 1 which depicts the adjusted capital balance as of December 31st followed by the percentage total of shares allocated to each investor following the deduction of the 20% performance fee);

(e) determining those of said investors in said fund which have incurred losses in value for their investments in the fund during a period of time (See Exhibit 1 and pg. 86, column 1, second full paragraph which depict and discuss adjusted capital balances and subsequent percentage of shares after July 1st and December 31st, respectively,

and how a determination of net income or loss must be made for every period where the sharing ratios change),

(f) determining the amount of the loss for each said investor which incurred a loss (See Exhibit 1 and pg. 86, column 1, second full paragraph which depict and discuss adjusted capital balances and subsequent percentage of shares after July 1st and December 31st, respectively, and how a determination of net income or loss must be made for every period where the sharing ratios change).

However, Levy et al. does not expressly disclose:

(g) maintaining a running loss carryforward for each said investor which incurred a loss, and

(h) using the loss carryforward in calculating subsequent PFs and redistribution of shares.

Gastineau et al. discloses adjusting a portfolio to take into consideration factors such as dividend credits when determining the real-time calculation of the intra-day net asset value (See column 4, lines 15-17, and column 5, lines 16-18, which disclose how a portfolio is adjusted for credits attributable to a specified day when calculating the net asset value).

Both Gastineau et al. and Levy et al. disclose methods that allow fund managers to monitor and/or maintain net asset values in investment funds. Gastineau et al. expressly discloses maintaining credits for respective investors in order to calculate the net asset value of an actively managed investment fund upon the occurrence of a realization event, such as reallocating capital to correspond with the performance fees

due the fund manager and the redistribution of shares. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the securities investment of Levy et al. to incorporate credits for each investor that incurred a loss when tracking investment funds as taught by Gastineau et al. in order to efficiently account for the necessary adjustments resulting from the calculation of performance fees and the redistribution of shares. (See column 8, lines 13-24, and column 9, lines 14-29 which discuss the need to track hedging portfolios closely in order to protect against major losses, the need to minimize tracking error in order to hedge the portfolio efficiently, and the customer service aspect of providing investors with real-time updates concerning their investments).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Leemhuis (U.S. 6,470,325) which discloses a method and data processing system for managing a mutual fund brokerage.

Tarrant (U.S. 7,085,738) which discloses a method and system for creating and operating an investable hedge fund index fund.

Wallman (U.S. 6,338,047) which discloses a method and system for investing in a group of investments that are selected based on the aggregated, individual preference of plural investors.

Chaffee (U.S. 7,165,044) which discloses an investment portfolio tracking system and method.

Sullivan (U.S. 7,107,229) which discloses an apparatus and method for creating and managing a financial instrument.

Herbst et al. (U.S. 6,938,009) which discloses a digital computer system and methods for a synthetic investment and risk management fund.

Fernholz (U.S. 5,819,238) which discloses an apparatus and accompanying methods for automatically modifying a financial portfolio through dynamic re-weighting based on a non-constant function of current capitalization weights.

Nebel (U.S. 5,829,747) which discloses a stock market big board game.

Wallman (U.S. 6,601,044) which discloses a method and apparatus for enabling individual or smaller investors or others to create and manage a portfolio of securities or other assets or liabilities on a cost effective basis.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael R. Zecher whose telephone number is 571-270-3032. The examiner can normally be reached on M-F 7:30-5:00 alt. Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on 571-270-3033. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MRZ

Lynda Jasmin 2/12/07
LYNDA JASMIN
SUPERVISORY PATENT EXAMINER